IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.679 OF 2003

Krishnakumar K. Ashar ..Appellant

versus

The Municipal Corporation of the City of Thane. ..Respondent.

Ms. Gauri Godse for the Appellant

Mr.R.S.Apte for the respondent Corporation.

Coram : S.R.Sathe, J.
Dated : 24th March, 2006

P.C.

1. Heard both the learned Advocates.

2. The learned Advocate for the appellant submitted that in similar matter notice under 260 of Bombay Provincial Corporation Act, 1949 was issued to the present appellant in respect of different part of the same building and the same was challenged in first appeal No.1383 of 2004 wherein the Division Bench of this Court has passed the order after quashing the decree passed by the Court of CJJD, Thane. The learned Advocate for the appellant tendered the said order and submitted that in this matter also similar order be passed.

3. From the perusal of the record it appears that the present second appeal is preferred against the judgment and order passed by the 5th Additional Judge, Thane in Civil Appeal No.1925 of 2001. Hence the order passed in the said Civil Appeal as well as the suit bearing Special Civil Suit No.232 of 2000 are quashed and it is hereby directed that the appellant shall appear before the Deputy Commissioner of the Respondent Corporation on 10.4.2006 at 11 a.m.

4. The Deputy Municipal Commissioner of the Respondent on the aforesaid date decide the future course of proceedings.

5. The Appellant shall file all the necessary documents including his reply on which he wants to rely on or before 10.5.2006.

6. The Appellant shall file affidavit and give undertaking that he will not part with the suit property or create third party interest in respect of the suit property. The Defendant Corporation shall be entitled to issue notice in case further construction is carried on. The Appellant shall have liberty to challenge the same as per due

process of law.

7. The Dy. Municipal Commissioner of Respondent shall by letter give opportunity of hearing to the appellant and decide the matter by 15.6.2006 and communicate its decision thereon to the Appellant by RPAD to the Appellant at the address mentioned in the cause title, which will be valid communication.

8. The Appellant shall extend all the necessary co-operation required by the respondent in this regard to the Respondent, failing which the proceedings shall be decided without hearing the Appellant.

9. The parties shall maintain the status quo with respect to the suit property in all respects pending the decision of the respondent and two weeks thereafter.

10. No order as to costs.

11. In view of the above, appeal is disposed of accordingly.

(S.R.Sathe, J.)